KENYA

In 1998, the U.S. trade surplus with Kenya was $101 million, a decrease in the trade balance of $11 million from the U.S. trade surplus of $112 million in 1997. U.S. merchandise exports to Kenya were approximately $199 million, a decrease of $27 million (11.8 percent) from the level of U.S. exports to Kenya in 1997. Kenya was the United States’90th largest export market in 1998. U.S. imports from Kenya were about $99 million in 1998, a decrease of $15 million (13.6 percent) from the level of imports in1997. The stock of U.S. foreign direct investment (FDI) in Kenya in 1997 was $190 million, an increase of over 32.9 percent from the level of U.S. FDI in 1996.

Kenya's economic growth rate slowed in 1998 for the second year in a row. Following a 4.6 percent increase in real gross domestic product (GDP) in 1996, the growth rate declined to 2.3 percent in 1997 and then dropped to an estimated 1.5 percent in 1998. The continued poor performance of the economy may be attributed to problems with economic governance, as well as deteriorating infrastructure and high interest rates during most of the year. Investor confidence remains low as the result of a troubled banking sector, occasional outbreaks of political and ethnic violence and continuing crime problems. During 1998, the Government of Kenya made slow progress in meeting the International Monetary Fund's conditions for resuming assistance under an enhanced structural adjustment facility (ESAF). In June 1998, the World Bank allowed its structural adjustment credit to lapse.

IMPORT POLICIES

Kenya progressively reduced its number of customs duty bands (including the zero rate) from eight to four between June 1994 and June 1997. The maximum tariff rate fell from 45 percent in June 1994 to 25 percent in June 1997. Additional suspended duties of 5 percent or 10 percent apply to certain products including paper and paperboard, flat-rolled iron and steel, resin, yarn, cars, minibuses, pickups, and tires.

Beginning in June 1998, import duties were increased from 15 percent to 25 percent on a selected range of agricultural produce and their substitutes, cement, grinding wheels and gas cylinders. Kenya's import regulations on agricultural products are constantly changing, depending on politics, domestic supply, and demand. To address food security concerns, the government periodically prohibits exports of wheat and corn. Kenya has frequently applied prohibitively high tariffs or outright import bans on certain agricultural imports. A dairy import ban was lifted in mid-l997. However, as of December 1997, an ad valorem duty of 70 percent was levied on rice, sugar, and milk. The tariff on wheat was the higher of the following: (a) 75 percent *ad valorem* or (b) 50 percent ad valorem plus 3.75 Kenyan shillings per kg. (approximately $56 a metric ton). In June 1998, a 5- percent suspended duty was imposed on imported fruits, vegetables and their products and on such non-agricultural items as paper and paper products, clothing, aluminum tubes, lamps and electric cables.

In 1993, Kenya abolished import licensing except for certain items based on health, environmental, and security concerns. The list includes livestock and commercial seeds. Any import shipment with an f.o.b.value of more than $5,000 requires pre-shipment inspection (PSI). Shipments originating from the United States are inspected by COTECNA Inspection, S.A., a Swiss firm. In addition to a "clean report of findings" (CRF), certifying that the goods are consistent with the invoice, the inspection agency also furnishes a"valuation certificate" or bill of lading that enables the Kenyan Government to determine the correct duty. The import declaration fee, which includes a PSI fee, is 2.75 percent of the export (f.o.b.) value.

In addition to the import declaration fee, agricultural imports are charged a fee of 1 percent of C.I.F. value to support the Kenya Plant Health Inspectorate Service (KEPHIS). KEPHIS was recently formed to regulate the importation and exportation of plant materials and the trade in bio-safety control organisms in accordance with the International Plant Protection Convention (IPPC). Moreover, if importers fail to obtain an advance inspection, a 15-percent penalty (25-percent for motor vehicles) is applied for local inspection. Goods airlifted by courier services are not subject to PSI if their value does not exceed $10,000.

In the last two years, the government largely reversed earlier promising steps to address corruption at the port of Mombasa. The government replaced a well-respected businessman hired to manage the port. One effort to prosecute port and customs officials accused of corruption made little headway. In September 1996, the government, under pressure from international donors, turned over the management of the port container terminal to the UK port of Felixstowe. However, Felixstowe withdrew in September 1997 after the government failed to address many deficiencies and problems at the port. In 1998, government officials promised steps to address the problems of deteriorating equipment and corruption at the port but little progress was made.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Kenya Bureau of Standards (KBS), a government regulatory body under Kenya's Ministry of Industrial Development, inspects imports to ensure conformity to International Standards Organization (ISO) product standards. The inspection fee is 0.2 percent of cif value. KBS also conducts product testing for individual product categories and undertakes certification. Products that do not meet the standards are withdrawn from the market, and the importer is prosecuted. KBS is reviewing all standards, especially those that are ten or more years old and about 500 standards still need to be reviewed.

Certain imported agricultural goods are subject to further inspection by the KEPHIS. For example, commercial hybrid grain seeds must be evaluated for a period of four years by the Inspectorate before they can be released to the market. In early 1996, Kenya, citing environmental standards, effectively banned commercial seed imports by requiring that all approved seed be grown in the country. Though the ban was later lifted, the government still carefully controls seed corn imports. As of July 1997, the Weights and Measures Act requires a reduced list of twenty different products to be labeled with metric measurements and packaged in even units(e..g., 2.5 liters, not 2.51). Shipments in violation of these rules may not be re-exported.

GOVERNMENT PROCUREMENT

Although not repealed, Kenya's "buy national" requirement, which provides local firms with a 10 percent preference in government tenders, is no longer observed. According to government regulations, goods worth more than $4,000 must be purchased through open tender. In practice, however, tenders are frequently awarded to noncompetitive firms in which government officials have a significant interest. Conflict-of-interest regulations are not enforced. Some of the largest government contracts, including those for an international airport in 1994 and for a Presidential jet in 1995, have been awarded in secret. More transparent government procurement might boost U.S. exports by $100 million to$500 million, based on available government procurement opportunities.

Kenya

EXPORT SUBSIDIES

In 1992, the government enacted a duty/value-added tax remission facility that enables exporters to purchase imported inputs tax free. Some firms in export processing zones dump goods imported duty free on the domestic market, thus unfairly competing with local producers and other importers. No general system of preferential financing exists, but sectoral government development agencies in areas such as tourism and tea are supposed to provide funds at below-market rates to promote investment and exports by Kenyans.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Kenya is a member of the World Intellectual Property Organization (WIPO) and the African Regional Industrial Property Organization. Kenya has joined both the Paris Convention on the protection of industrial property and the Berne convention on the protection of literary and artistic works. Although a unified system for the registration of trademarks and patents from Anglophone Africa was signed in 1976, the effort has not proceeded owing to lack of coordination and funds. Future protection may be achieved through the African Intellectual Property Organization, although enforcement and cooperation procedures are untested. Kenya, as a member of the WTO, must also implement the agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs). Kenya is amending its intellectual property laws to conform to WIPO guidelines, the TRIPs agreement, and other international conventions. In this regard, the Industrial Property (patent) and Trademark Acts are scheduled for amendment in 1999. The copyright act protects sound as well as video recordings. Violations are subject to a fine of up to $3,600 or imprisonment for five years or both. In practice, however, the Attorney General's office (which is responsible for copyright matters) and the police seldom enforce the laws. Pirated sound recordings are common, and virtually all videos available in shops are unlicenced. Given the small size of the market, improved copyright protection might increase exports by less than $10 million.

Regarding intellectual property rights for seeds, Kenya has not joined the Union for the Protection of New Varieties in Plants (UPOV), and its plant variety protection laws do not conform to international regulations. The country is expected to join UPOV in 1999. The Ministry of Agriculture restricts international seed trade by setting quantitative ceilings on cereal seed imports. Moreover, the variety certification process is tedious and restrictive. A minimum of four years is needed for the government to approve or reject a variety, a timetable that effectively restricts trade.

SERVICES BARRIERS

No explicit barriers exist on the provision of services by U.S. professionals. For example, a U.S. bank prepared flotation of shares by Kenya Airways, and a U.S. life insurance firm is the leader in its industry sector. Nevertheless, foreign companies offering services in construction, engineering, and architecture may face discrimination when bidding for public projects. The Kenyan bar, for example, has declined to admit foreign lawyers for more than 11 years. New foreign investors with expatriate staff are required to submit plans for the gradual elimination of non-Kenyan employees.

INVESTMENT BARRIERS

For firms listed on the Nairobi stock exchange, non-Kenyan ownership can total up to 40 percent, with a 5 percent limit on individual foreign investment. Life insurance companies are required to have at least 33 percent local ownership. Foreign brokerage and fund management firms are allowed to participate in the local market through locally registered companies. Such companies must have local ownership of at least: (a) 30 percent in the case of fund management firms, or (b) 51 percent in the case of brokerage firms. In other industrial sectors, local partners are encouraged but not mandated. Small-scale commercial enterprises no longer require a Kenyan partner. Technology transfer requirements and foreign exchange controls have been abolished. Difficulty in obtaining clear title to land, lack of confidence in speedy and fair resolution of disputes, and requests from officials for illicit payments continue to hamper investment. If these investment barriers were lifted, U.S. investment might increase by $100 million to $150 million.

Non-strategic State-owned Enterprises

Kenya has a large number of state-owned enterprises, known as parastatals. The government enacted a policy on the privatization and reform of public enterprises in 1992. Initially, 207 "non-strategic" parastatals were targeted for divestiture. Another 33 "strategic" parastatals were to be retained and reformed by the government to improve their efficiency. By the end of September 1998, the government of Kenya had completed 165 divestitures, from which it received $179 million. Capitalization of the Nairobi stock exchange increased by $105 million. Divestiture took the form of flotation on the Nairobi stock exchange (11 firms), competitive bidding (16) liquidations, (14) receiverships, (20) preemptive rights, (54) and one management/employee buyout. In addition, divestiture was completed of 39 tea factories owned by the Kenya Tea Development Authority, a government parastatal. The largest deal so far was the 1996 sale of Kenya Airways, which realized $26 million. The government sold 26 percent of the airline to KLM, 51 percent through a public flotation, and retained the remaining 23 percent.

Planned privatization for 1998 included the country’s biggest sugar mill, a large reinsurance company, and flotation of an additional 25 percent of government shares in the country's largest bank, Kenya Commercial Bank (KCB). Only the sale of shares in KCB was concluded. Mumias sugar company was not an attractive investment prospect due to cash flow problems arising from competition from imported sugar. In addition, the procedures for privatizing the corporation were the subject of controversy between its management, the government and sugar cane farmers. Kenya Reinsurance Corporation could not find a "suitable strategic partner" to initiate its privatization process.

While the government has removed most of the monopolies, including all trading monopolies, formerly enjoyed by the country's "strategic" parastatals, some regulatory practices remain barriers to investment. For example, the government continues to restrict access to radio and TV licenses for independent media organizations. The government provides no clear-cut guidelines for licensing TV and radio stations, which results in a biased licensing system. Despite licensing problems, Kenyans now have three open-air television stations: the state-owned Kenya broadcasting corporation (KBC) and two private stations whose owners maintain close ties to the government. Though the pace of liberalization is slow, the government is gradually opening the airwaves to independent broadcasters as evidenced by the licensing in mid-1997 of broadcasts by the British Broadcasting Corporation (BBC) and the granting in 1998 of frequencies to the Nation media group for radio and television broadcasts.

Public Utilities

The government has been hesitant to open public infrastructure to competition because most utilities that manage it are considered "strategic" enterprises. The reform and partial privatization of the railways, electric power generation and telecommunications are behind schedule. Kenya Railways Corporation has contracted out maintenance of some of its locomotives to General Electric and may be commercialized further. At the beginning of 1997, the Kenya Power and Lighting Company was split into two entities: the Kenya Power Company (now renamed the Kenya Electricity Generating Company), to deal with power generation, and KPLC, which will now be responsible only for distribution of electricity. An electricity regulatory board was established in April 1998 to regulate retail tariffs and to approve power purchase contracts between KPLC and producers. In a step forward, the government licensed two independent power producers to sell electricity to the Kenya Electricity Generating Company, but there have been questions about the procedures used in the award of the contracts. Since 1994, refined oil products have been imported, but they are subject to high duties to protect the national refinery's market share.

The Kenya Post and Telecommunications Corporation (KPTC) provides both postal and telecommunications services and regulates the provision of these services. The corporation has authorized pay telephones by private bureaus and has a joint venture with a private cellular telephone operator. Several Internet service providers are operating in Nairobi. In general, KPTC has been very slow in approving requests from foreign missions, businesses, or individuals to operate broadcast satellite dishes (VSATS) and has not licensed direct competition in telephone services. The corporation stopped licensing private telephone bureaus beginning mid-December 1996. In addition, and more damaging, KPTC without warning shut down home country direct telephone services in October1996. On a limited basis, some home country direct services have been restored. The corporation has allowed some competition in the area of "add-ons" such as fax and telex services. A wireless local loop is being planned to enhance countrywide telephone penetration.

Legislation to liberalize the telecommunications sector was passed by Parliament in 1998. It should take effect in early 1999. The new law establishes the Communications Commission of Kenya to regulate telecommunications and radio communications in the country (a role similar to the FCC in the United States). The commission will also regulate postal services. The Kenya communications act of 1998 also establishes a telecommunications corporation, TELKOM Kenya, and a Postal corporation as spinoffs from KPTC. Finally, the Act sets up a national communications secretariat to advise the government on sectoral policy. The government plans to sell up to 30 percent of TELKOM Kenya to a strategic partner before an initial public offer is made on the Nairobi stock exchange. Much of the staff for the Communications Commission will come from the soon-to-be-defunct KPTC.

ANTICOMPETITIVE PRACTICES

As noted above, the government does not rigorously enforce copyright laws on sound and video recordings. Further, ineffective and corrupt enforcement of import policies exposes a wide range of businesses to unfair competition.

ELECTRONIC COMMERCE

Kenya has not yet formulated a policy on electronic commerce.